

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

Fasanmi Isijola,	:	
	:	
Appellant,	:	
	:	C. A. No.: 09A-02-014 (CHT)
	:	
v.	:	
	:	
	:	
Emily P. Bissell	:	
Hospital and	:	
Unemployment Insurance	:	
Appeals Board,	:	
	:	
Appellees.	:	

**OPINION and ORDER**

**Upon Appeal From a Decision of the  
Unemployment Insurance Appeals Board**

Submitted: November 2, 2009

Decided: February 15, 2010

Erika Y. Tross, Department of Justice, Wilmington,  
Delaware; Attorney for the Employer/Appellee.

Fasanmi Isijola, *pro se*.

**TOLIVER, JUDGE**

Before the Court is an appeal by Fasanmi Isijola from a decision of the Unemployment Insurance Appeals Board. The Board affirmed the determination by the Appeals Referee that Mr. Isijola failed to file a timely appeal, pursuant to 19 Del. C. § 3318(b). That which follows is the Court's resolution of the issues so presented.

**STATEMENT OF FACTS AND  
NATURE OF THE PROCEEDINGS**

On August 1, 2005, Mr. Isijola began his employment as a certified nursing assistant with Emily P. Bissell Hospital ("EPBH"). On or about August 26, 2008 a letter was sent to Mr. Isijola by Vincent P. Meconi, the Secretary of the Delaware Department of Health and Social Services. The letter stated that Mr. Isijola was terminated as an employee of EPBH effective as of the date of the letter based upon the interaction between Mr. Isijola and a patient at EPBH on July 5, 2008 which was alleged to have included the use of inappropriate

language and other behavior.<sup>1</sup> The incident was reported to have been recorded by a surveillance camera.

At some point in time following his dismissal, Mr. Isijola filed a claim for unemployment benefits. His claim was denied by a Claims Deputy on September 30, 2008. That decision was mailed to his address of record with the UIAB.<sup>2</sup> He filed an appeal on November 5, 2008.

A hearing was held before the Board solely on the issue of the timeliness of Mr. Isijola's appeal. The Board affirmed the determination by the Claims Deputy that Mr. Isijola's failure to file a timely appeal barred further proceedings pursuant to 19 *Del. C.* § 3318(b). Mr. Isijola appealed that decision to this Court on February 27, 2009.

---

<sup>1</sup> As a result of that conduct, Mr. Isijola was deemed to have violated the Patient's Rights Doctrine, specifically 16 *Del. C.* § 1121(1).

<sup>2</sup> That address was listed as P.O. Box 251, Bear, Delaware 19701.

## **DISCUSSION**

### **Standard of Review**

This Court's review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence in the record to support the Board's findings, and that such findings are free from legal error.<sup>3</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>4</sup> An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>5</sup>

### **Untimely Appeal**

The Delaware Code, specifically, 19 *Del. C* § 3318(b), provides that unless a claimant files an appeal within ten calendar days after the decision of the Claims Deputy

---

<sup>3</sup> *Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

<sup>4</sup> *Oceanport Indus. v. Wilm. Stevedores*, 636 A.2d 892, 899 (Del. 1994).

<sup>5</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

being mailed to his or her last known address on record, the decision shall be final. Neither the Board nor the Appeals Referee has the power to accept an appeal filed by a claimant beyond the ten day period absent exceptional circumstances.<sup>6</sup> In addition, the Board, pursuant to 19 Del. C. § 3320, has the authority to hear an appeal *sua sponte* beyond the ten day period in cases where there has been some administrative error which deprived the claimant of the opportunity to file a timely appeal.

That authority also includes situations when the interests of justice would not be served by the Board's failure to act.<sup>7</sup> However, as the Delaware Supreme Court has noted those such situations are extremely rare.<sup>8</sup> For example, when an appeal is belatedly filed due to the claimant's unintentional error or accidental action, and

---

<sup>6</sup> *Crawford v. Unemployment Ins. Appeal Bd.*, 1999 WL 458725, at \*2 (Del. Super. June 18, 1999) (citing *Rosembert v. Perdue Inc.*, 1996 WL 662988, at \*3 (Del. Super. Sept. 12, 1996)).

<sup>7</sup> See *Sheppard v. GPM Investments, LLC*, 2008 WL 193317, at \*2 (Del. Super. Jan. 23, 2008).

<sup>8</sup> See *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222 (Del. 1991).

not due to an administrative error, § 3318(b) will jurisdictionally bar the claim from further appellate consideration.<sup>9</sup>

In the instant situation, the Board rendered its decision that Mr. Isijola's appeal was untimely because he filed his appeal beyond the ten day appeal period allotted by 19 Del. C. § 3318(b). Indeed, Mr. Isijola did not file his appeal until November 5, 2008, almost one month beyond the time so allowed. There was no dispute that the address to which the decision was sent was in fact Mr. Isijola's correct address. Nor is there any other evidence of administrative error or that the interests of justice would otherwise require the Board to hear his appeal. The decision of the Board must be deemed to be supported by substantial competent evidence in the record and free from legal error.

---

<sup>9</sup> *Hartman v. Unemployment Ins. Appeal Bd.*, 2004 WL 772067, at \*2 (Del. Super. April 5, 2004).

**CONCLUSION**

For the foregoing reasons, the Court concludes that the decision of the Unemployment Insurance Appeals Board must be, and hereby is, **affirmed**.

**IT IS SO ORDERED.**

---

**TOLIVER, JUDGE**